



This document is scheduled to be published in the Federal Register on 06/26/2014 and available online at <http://federalregister.gov/a/2014-14774>, and on FDsys.gov

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 402 and 424

[Docket Nos. FWS–HQ–ES–2012–0096; FWS–R9–ES–2011–0072]

[120106026-4518-02; 120106025-4514-02]

[4500030114]

RINs 1018–AX86; 1018–AX88; 0648–BB80; 0648–BB79

Endangered and Threatened Wildlife and Plants; Changes to the Definitions and Regulations for Designating Critical Habitat

AGENCIES: U.S. Fish and Wildlife Service, Interior; National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Proposed rules; extension of comment periods.

SUMMARY: We, the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) (collectively referred to as the “Services” or “we”), announce the extension of the public comment periods on our May 12, 2014, proposals to revise definitions and regulations regarding critical habitat. Comments previously submitted need not be resubmitted, as they will be fully considered in preparation of each final rule.

DATES: We will consider comments received or postmarked on or before October 9, 2014. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date.

ADDRESSES: You may submit comments by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. In the Search box, enter the appropriate docket number; for the proposed revised definition of destruction or adverse modification of critical habitat, use FWS–R9–ES–2011–0072, and for the proposed rule to amend the regulations for designating critical habitat, use FWS–HQ–ES–2012–0096. You may submit a comment by clicking on “Comment Now!” Please ensure that you have found the correct rulemaking before submitting your comment.
- *U.S. mail:*

- Submit comments on the proposed revised definition of destruction or adverse modification of critical habitat to: Public Comments Processing, Attn: Docket No. FWS–R9–ES–2011–0072; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042-PDM; Arlington, VA 22203.
- Submit comments on the proposed rule to amend the regulations for designating critical habitat to: Public Comments Processing, Attn: Docket No. FWS–HQ–ES–2012–0096; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042-PDM; Arlington, VA 22203.

We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the **Public Comments** section, below, for more information).

FOR FURTHER INFORMATION CONTACT:

For proposed revised definition of destruction or adverse modification of critical habitat:

Patrice Ashfield, U.S. Fish and Wildlife Service, Division of Environmental Review, 4401 N. Fairfax Drive, Suite 420, Arlington, VA 22203; telephone 703/358–2171; facsimile 703/358–1735; or Cathryn E. Tortorici, National Marine Fisheries Service, Office of Protected Resources, Interagency Cooperation Division, 1315 East-West

Highway, Silver Spring, MD 20910; telephone 301/427–8405; facsimile 301/713–0376.

If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800/877–8339.

For the proposed rule to amend the regulations for designating critical habitat:

Douglas Krofta, U.S. Fish and Wildlife Service, Division of Conservation and Classification, 4401 N. Fairfax Drive, Suite 420, Arlington, VA 22203; telephone 703/358–2527; facsimile 703/358–1735; or Marta Nammack, National Marine Fisheries Service, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910; telephone 301/427–8469; facsimile 301/713–0376. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800/877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We will accept written comments and information during this extended comment period on our proposed rule to revise the definition of destruction or adverse modification of critical habitat and our proposed rule to amend the regulations for designating critical habitat that were published in the **Federal Register** on May 12, 2014 (79 FR 27060 and 79 FR 27066, respectively). We will consider information we receive from all interested parties on or before the close of the comment period (see **DATES**).

If you submitted comments or information on either proposed rule during the public comment period that began May 12, 2014, please do not resubmit them. We have incorporated them into the public record, and we will fully consider them in the preparation of our final rules.

You may submit your comments and materials regarding either proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit a comment via <http://www.regulations.gov>, your entire comment—including any personal identifying information—will be posted on the Web site. We will post all hardcopy comments on <http://www.regulations.gov> as well. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Background

On May 12, 2014, we published three related documents concerning designation and implementation of critical habitat under the Act: two proposed regulation amendments and one draft policy. This notice extends the comment period for the two proposed regulation amendments, and a separate notice published elsewhere in today's issue of the **Federal Register** extends the comment period for the draft policy. The two proposed rules for which we are extending the comment period in this document propose to revise definitions and regulations regarding critical habitat.

Specifically, the proposed rule to revise the definition of destruction or adverse modification of critical habitat proposes to amend title 50, part 402, of the Code of Federal Regulations, which implements the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*). Part 402 establishes the procedural regulations governing interagency cooperation under section 7 of the Act. The Act requires Federal agencies, in consultation with and with the assistance of the Secretaries of the Interior and Commerce, to insure that their actions are not likely to jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of critical habitat of such species. In 1986, the Services established a definition for “destruction or adverse modification” (§ 402.02) that was found to be invalid by the U.S. Court of Appeals for the Fifth (2001) and Ninth (2004) Circuits. We propose to amend part 402 to replace the invalidated definition with one that is consistent with the Act and the circuit court opinions.

The proposed rule to revise the regulations for designating critical habitat proposes to amend portions of title 50, part 424, of the Code of Federal Regulations, which also implements the Act. Part 424 clarifies, interprets, and implements portions of the Act concerning the procedures and criteria used for adding species to the Lists of Endangered and Threatened Wildlife and Plants and designating and revising critical habitat. Specifically, we propose to amend portions of part 424 that clarify procedures for designating and revising critical habitat. The proposed amendments would make minor edits to the scope and purpose, add and remove some definitions, and clarify the criteria for designating critical habitat.

Authors

The primary authors of this notice are the staff members of the Endangered Species Program, Headquarters Office, U.S. Fish and Wildlife Service.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: June 17, 2014

Signed: Michael J. Bean

Acting Principal Deputy Assistant Secretary for Fish and Wildlife and
Parks

Dated: June 17, 2014

Signed: Samuel D. Rauch III

Deputy Assistant Administrator for Regulatory Programs

National Marine Fisheries Service

Billing Codes 4310-55-P; 3510-22-P

